

## Message Text

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TO AMEMBASSY BONN IMMEDIATE

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AMEMBASSY PARIS

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C O N F I D E N T I A L USBERLIN 1983

E.O. 11652: GDS

TAGS: PFOR, PGOV, WB, GW

SUBJECT: PRESS INTEREST IN ALLIED RESERVATIONS ON ANTI-TERRORISM LAW

REFS: A) STATE 224773, B) BONN 15260, C) USBERLIN 1923

1. SUMMARY: MISSIONS HAVE PREAPRED ESSENTIALLY NON-SUBSTANTIVE PRESS GUIDANCE TO BE USED BY CHAIRMAN (FRENCH) PRESS OFFICER TO RESPOND TO QUERIES ON ALLIED BK/O DEPRIVING PART OF ANTI-TERRORISM LAW OF EFFECT IN BERLIN. BERLIN PRESS HAS SO FAR REACTED TO BK/O IN LOW-(36 2-6. FRANKFURTER ALLGEMEINE, HOWEVER, HAS TWO MAJOR STORIES, ONE ON BK/O AND ONE APPARENTLY WRITTEN BEFORE BK/O BECAME PUBLIC, WHICH FOCUSES ON ALLEGED ALLIED INCLINATION TO CUT BACK ON COMPETENCE OF FEDERAL PROSECUTOR IN CITY TO DETRIMENT OF LEGAL UNITY BETWEEN BERLIN AND FRG. END SUMMARY.

2. FOLLOWING IS PRESS GUIDANCE AGREED BY MISSIONS  
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Q. WHAT IS THE MEANING AND PURPOSE OF THE ALLIED BK/O DEPRIVING PART OF THE ANTI-TERRORISM LAW OF EFFECT IN BERLIN?

A. THIS IS A TECHNICAL MATTER. THE BK/O IS DESIGNED TO MAKE CLEAR THAT THE QUESTION OF WHICH PROSECUTOR HANDLES A GIVEN MATTER AND UNDER WHAT LAW WILL BE DECIDED BY THE APPROPRIATE AUTHORITIES IN ACCORDANCE WITH THE CIRCUMSTANCES OF THE CASE.

Q. DOES THIS MEAN THAT THE FEDERAL PROSECUTOR WILL NOT BE ABLE TO PROSECUTE CASES IN BERLIN UNDER THE NEW LAW?

A. NO, IT DOES NOT MEAN THAT. HE WILL BE ABLE TO ACT IN THE SAME MANNER AS AT PRESENT, PURSUANT TO LAWS IN FORCE IN BERLIN, INCLUDING THE SUBSTANTIVE PROVISIONS OF THIS NEW LAW, AND AS THE CIRCUMSTANCES OF A CASE REQUIRE.

Q. IS THIS THE FIRST TIME THAT A WEST GERMAN CRIMINAL LAW AFFECTING THE PROSECUTION OF CRIMINALS OR A PART OF SUCH A LAW HAS NOT BEEN TAKEN OVER IN BERLIN?

A. NO. THERE ARE A SMALL NUMBER OF OTHER PROVISIONS WHICH, BECAUSE OF THE CITY'S SPECIAL STATUS, ARE NOT APPLICABLE HERE.

Q. IS THIS BK/O CONNECTED WITH THE LORENZ CASE?

A. NO. END TEXT.

3. COMMENT: WE ATTEMPTED TO KEEP PRESS GUIDANCE BLAND AND NON-POLITICAL SINCE DECISION TO ISSUE BK/O WAS DIRECTED AT OPTICAL EFFECT OF CONTENTIOUS PORTION OF LAW RATHER THAN AT ITS SUBSTANCE. OBJECTIVE WAS TO DISCOURAGE SPECULATION THAT ALLIED ACTION HAD POLITICAL BASE OR WAS OTHER THAN MINOR TECHNICAL ACTION SIMILAR TO OTHERS OCCASIONALLY TAKEN, FRENCH HAD SUGGESTED THAT PRESS OFFICER EXPLAIN THAT SINCE ARTICLE 3(2) OF NEW LAW PURPORTS TO GIVE FEDERAL PROSECUTOR RIGHT TO DECIDE HIS OWN CONFIDENTIAL

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COMPETENCE IN DISPUTE WITH BERLIN PROSECUTOR, IT WOULD HAVE BEEN INCONSISTENT WITH PROVISIONS OF BK/O(51)63 WHICH STATE THAT FEDERAL OFFICIALS MAY OPERATE IN BERLIN ONLY PURSUANT TO AUTHORIZATION FROM BERLIN OFFICIALS AND SUBJECT TO ALLIED CONTROL. WE POINTED OUT, HOWEVER, THAT BK/O(51)63 ENVISAGES SITUATION IN WHICH BERLIN HOUSE OF REPRESENTATIVES WOULD DELEGATE AUTHORITY TO AN OFFICIAL SUCH AS FEDERAL PROSECUTOR WITHOUT PREJUDICE TO ULTIMATE

ALLIED RIGHT OF CONTROL. FRENCH ACCEPTED ARGUMENT THAT IT WOULD BE BEST TO AVOID CONSTRUCTING MUCH OF A LEGAL RATIONALE FOR ALLIED ORDER AND THAT WE COULD NOT BE CANDID ON POLITICAL CONSIDERATIONS WHICH LED TO OUR ACTION. END COMMENT.

4. BERLIN PRESS HAS THUS FAR PLAYED STORY IN LOW-KEY FASHION. TAGESSPIEGEL, FOR EXAMPLE, REPORTS ISSUANCE OF BK/O FACTUALLY AND NOTES MERELY THAT ALLIES DEPRIVED OF EFFECT ARTICLE WHICH ESTABLISHES CERTAIN "COMPETENCES" OF FEDERAL PROSECUTOR. WE HAVE SEEN TWO SUBSTANTIAL STORIES IN SEPTEMBER 21 ISSUE OF FRANKFURTER ALLGEMEINE, HOWEVER, WHICH ARE BEGINNING TO ATTRACT FURTHER INTEREST. ONE STORY, DATED BONN, REPORTS U.S. PROTEST AGAINST ACTIONS OF FRG SECURITY OFFICIALS IN CONNECTION WITH RECENT DZEC ESPIONAGE CASE (BONN 13681). ARTICLE ARGUES ALLIES ARE DOING CITY DISSERVICE BY SUGGESTING THAT GERMANS CANNOT TAKE EFFECTIVE ACTION AGAINST EAST EUROPEAN INTELLIGENCE OPERATIVES ARMED WITH DIPLOMATIC PASSPORTS AND PROCEEDS TO LINK ALLIED RESERVATIONS IN THIS AREA WITH RELUCTANCE WE ARE SAID TO HAVE SHOWN TO PERMIT FEDERAL PROSECUTOR TO PROSECUTE LORENZ KIDNAPPERS BEFORE BERLIN COURT. STORY SUGGESTS THAT GERMANS HAVE RESERVATIONS OF THEIR OWN ABOUT PROPOSED SOLUTION UNDER WHICH FEDERAL PROSECUTOR'S BERLIN OFFICE WOULD HANDLE LORENZ KIDNAPPING PROSECUTION HERE BECAUSE MEMBERS OF BERLIN OFFICE ARE NOT EXPERTS IN TRIAL WORK. ARTICLE REVIEWS 1969 LEGISLATION UNDER WHICH FEDERAL PROSECUTOR MAY OPERATE IN BERLIN AND PURSUANT TO WHICH EXPERTS FROM HIS KARLSRUHE OFFICE PROSECUTED HORST MAHLER IN 1972-1973 AND STATES THAT "RESTRICTIONS ON THE CAPACITY OF THE FEDERAL PROSECUTOR IN BERLIN IN HIS ROLE AS INVESTIGATOR AGAINST EASTERN

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AGENTS WHO COME ONTO GERMAN SOIL IN BERLIN AND AS INDICTING AUTHORITY IN CASES INVOLVING PROTECTION OF THE STATE BEFORE THE KAMMERGERICHT WOULD GRIEVOUSLY AFFECT LEGAL UNITY BETWEEN BERLIN AND THE FRG." AUTHOR ARGUES THAT THERE IS NOTHING IN QA WHICH CALLS FOR SUCH RESTRICTIONS AND CONCLUDES THAT "THE IDENTITY OF THE LAW ON THE CONSTITUTION OF THE COURTS WHICH CAME INTO FORCE AND WAS TAKEN OVER IN BERLIN IN 1969 TO THE EFFECT THAT SERIOUS CRIMES INVOLVING THE PROTECTION OF THE STATE ARE TO BE PROSECUTED BEFORE THE HIGHEST COMPETENT COURT OF A LAND BY THE FEDERAL PROSECUTOR IN THE FRG AS IN WEST BERLIN IS AN IMPORTANT SEGMENT OF GERMAN LEGAL UNITY."

5. SCND FRANKFURTER ALLGEMEINE STORY REPORTS ENTRANCE

INTO FORCE OF NEW ANTI-TERRORISM LAW WITH "ALLIED RESERVATIONS FOR BERLIN." STORY REPORTS FACTUALLY ON VARIOUS PROVISIONS OF NEW LAW AND EXPLAINS THAT FACT THAT LAW HAS BEEN TAKEN OVER IN BERLIN INDICATES THAT THERE ARE NO LONGER DIFFICULTIES WITH FEDERAL PROSECUTOR HANDLING LORENZ KIDNAPPING CASE HERE. AUTHOR OF THIS PIECE, WHICH IS DATED IN BERLIN, EXPLAINS THAT THIS DOES NOT MEAN DR. BUBACK WILL APPEAR PERSONALLY BEFORE COURT BUT THAT FEDERAL ATTORNEY WHO IS HEAD OF HIS OFFICE IN BERLIN IS ACTUALLY "SUITABLE" OFFICIAL TO RUN PROSECUTION. ARTICLE ALSO, HOWEVER, QUOTES PROVISION OF NEW LAW WHICH ALLIES HAVE NOT PERMITTED TO BE ADOPTED IN BERLIN AND STATES THAT "BY THIS ORDER OF THE ALLIED KOMMANDATURA THE THREE PROTECTIVE POWERS ARE PERMITTING A FURTHER DETERIORATION OF THE LEGAL UNITY BETWEEN THE FRG AND BERLIN. THEY ARE DOING THIS WITH REFERENCE TO THE PROVISION OF THE QA THAT THE WESTERN SECTORS OF BERLIN ARE NOT A PART OF THE FRG AND WILL CONTINUE NOT TO BE GOVERNED BY IT."

6. WE UNDERSTAND THAT CHAIRMAN PRESS OFFICER IS RECEIVING QUERIES SEPTEMBER 21 FROM OTHER PAPERS INTERESTED IN FOLLOWING UP FRANKFURTER ALLGEMEINE PIECES. GEORGE

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